

B

1 THE STATE OF NEW YORK

2 COUNTY OF SUFFOLK

3 -----X

4 In the Matter of the Application of,

5 CHRISTINE MALAFI, SUFFOLK COUNTY ATTORNEY,

6 as Claiming Authority,

7 Petitioner,

8 -against-

9 JAMES B. FERRARI,

10 Respondent.

11 -----X

12 District Court

13 Central Islip, New York

14

15 September 1, 2009

16 10:10 a.m.

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21 B E F O R E: Hon. J. Dinoto

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1 A P P E A R A N C E S:

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3 CHRISTINE MALAFI, SUFFOLK COUNTY ATTORNEY

4 Claiming Authority

5 H. Lee Dennison Building

6 100 Veterans Memorial Highway

7 Hauppauge, New York

8

9 BY: KELLY GREEN, ESQ.

10 Assistant County Attorney

11

12 CAMPANELLI and ASSOCIATES, P.C.,

13 129 Front Street

14 Mineola, New York

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16 BY: CHARLES MARTIN, of Counsel, ESQ.

17 Attorney for the Respondent

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Five Star Reporting, Inc.

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(631) 224-5054

1 (Time Noted: 10:10 a.m.)

2 THE COURT: You're James B.
3 Ferrari?

4 MR. MARTIN: No, sir, I am Charles
5 A. Martin from Campanelli and
6 Associates, and I am the attorney for
7 the Respondent.

8 THE COURT: Have you been
9 substituted?

10 MR. MARTIN: No, sir, I am from the
11 same law firm.

12 THE COURT: Same law firm?

13 MR. MARTIN: I am of counsel to the
14 law firm, sir.

15 MS. GREEN: Your Honor, just way of
16 background on this case. The calendar
17 shows that this case was on before you
18 on June 9, 2009 and at that time,
19 Mr. Campanelli did appear and made a
20 motion before the Court. I have the
21 transcript for the Court to review if
22 the Court wanted that transcript.

23 However, no determination and no hearing
24 went forth. Therefore, based on the
25 fact that the case was still open and

1 there was no determination on the case,
2 I put the case back on the calendar so I
3 can go forward with the forfeiture
4 action.

5 THE COURT: Was there a final
6 submission on the motion?

7 MR. MARTIN: Sir, you took oral
8 arguments on the motion.

9 THE COURT: Yes and I -- after oral
10 arguments, I denied the motion and there
11 was a suggestion that the motion should
12 be made on proper papers; has there been
13 any written motions submitted?

14 MR. MARTIN: No, sir, that would be
15 the County's responsibility.

16 MS. GREEN: No, it wouldn't, your
17 Honor. It was not my motion to make. I
18 opposed the motion at that time.

19 MR. MARTIN: And, sir, I disagree
20 that it would have to be made on motion.
21 Under the New York Civil Practice Laws
22 and Rules, under Section 312, a
23 Defendant in a civil hearing can appear
24 either pro se or by an attorney. I am
25 here for my client as his attorney under

1 the CPLR Rule 312, and a motion should
2 not be necessary for me to appear. I
3 have case law stating that a party
4 appear in a defendant civil action in
5 person or by an attorney. CPLR 321,
6 permits the defendant to appear by an
7 attorney through the same methods set
8 forth in CPLR 320-A 1E by serving an
9 answer or by appearing.

10 THE COURT: Counsel?

11 MS. GREEN: And the Pattern Jury
12 Charge allows me to take a missing
13 witness charge and imply that an adverse
14 inference would be taken against that
15 party, if the party is not present.

16 MR. MARTIN: Your Honor, it is not
17 our burden to prove anything at this
18 point. We believe that the County will
19 not be able to prove it's burden -- that
20 retaining the vehicle is necessary and
21 that other methods would not be more
22 proper for the County's safety such as
23 posting a bond.

24 MS. GREEN: Your Honor, in this
25 particular case, the evidence that I am

1 going try to submit into evidence
2 indicates that there is no reason that
3 this gentleman needs this vehicle back.
4 Based on the type of vehicle this it is,
5 the County does need to retain it so
6 that it remains in the same condition it
7 was in at the time of the seizure.

8 THE COURT: Let's address -- what
9 is your position, Madam County Attorney,
10 on having a hearing without Mr. Ferrari
11 being present as is the request of
12 counsel?

13 MS. GREEN: Mr. Ferrari needs to
14 testify as to what his hardship is going
15 to be in this particular case. If he is
16 not here to testify, he can't show a
17 hardship, therefore, he does have the
18 burden under the statute to show
19 hardship and should be present.

20 MR. MARTIN: I have Section 270-26,
21 which states that the County has to
22 produce evidence that the issuing or
23 restraining order prohibiting sale,
24 transferring a loss of the vehicle with
25 impositions of appropriate penalty for

1 violations such restraining order, the
2 taking of the bond and/or the use of an
3 interlock device could not suffice for
4 this. There is no requirement on our
5 part under Rule 270-26, that we provide
6 any evidence of a hardship. It is
7 solely the County's burden to show that
8 those other avenues are not sufficient
9 in this case.

10 MS. GREEN: Your Honor, I have not
11 had an opportunity to put a witness on
12 the stand, so can we do that?

13 THE COURT: Well, are you willing
14 to go ahead with the hearing?

15 MS. GREEN: Yes, I am, your Honor.

16 THE COURT: You have been given
17 some documents by the County Attorney,
18 Counsel?

19 MR. MARTIN: Yes, I have.

20 THE COURT: Have you looked at
21 them?

22 MR. MARTIN: Yes, I have.

23 THE COURT: Do you want a witness
24 called to lay the foundation for those
25 documents, or do you want to stipulate

1 that they go into evidence?

2 MR. MARTIN: We can stipulate that
3 they go into evidence, your Honor.

4 THE COURT: Now, you have given
5 your appearance; correct?

6 MR. MARTIN: Not yet.

7 THE COURT: Go ahead.

8 MR. MARTIN: My name is Charles A.
9 Martin. I am of Counsel to Campanelli
10 and Associates., PC, 129 Front Street,
11 Mineola New York 11501.

12 Thank you, your Honor.

13 THE COURT: Given the stipulation,
14 Madam Count Attorney, would you please
15 read into the record the documents for
16 identification purposes?

17 MS. GREEN: Yes.

18 Exhibit A, is the Felony Complaint
19 against James B. Ferrari. Exhibit B1,
20 is the Alcohol and Drug Influence
21 Report. Exhibit B2, is the refusal to
22 submit to a chemical test. Exhibit C,
23 is the Certificate of Disposition of a
24 prior conviction -- excuse me that is
25 C1. C2, is the Abstract of Driving

1 Record from the Department of Motor
2 Vehicles. Exhibit D, is the vehicle
3 title and registration records from the
4 Department of Motor Vehicles. Exhibit
5 E, is the Notice of Seizure and Hearing,
6 and this is improperly marked. It
7 should be F -- the last writing is a
8 printout from the Department of Motor
9 Vehicles registered in James B.
10 Ferrari's name.

11 THE COURT: Given the stipulation,
12 the documents are in evidence as
13 identified and recited on the record.

14 (WHEREUPON, the above-referred
15 documents, were marked as Plaintiff's A
16 through E, in evidence, as of this
17 date.)

18 THE COURT: Anything further, Madam
19 County Attorney?

20 MS. GREEN: No, your Honor.

21 THE COURT: Counsel?

22 MR. MARTIN: Not at this stage,
23 your Honor.

24 THE COURT: Okay.

25 MR. MARTIN: However, I would like

1 the chance to cross-exam the Witness for
2 the County that would be able to testify
3 as to why these steps are not going to
4 be sufficient.

5 THE COURT: Who might that be?

6 MR. MARTIN: I don't know, your
7 Honor. Under Rule 270-26, the County
8 has the burden of proving --

9 MS. GREEN: I haven't done a
10 summation, your Honor.

11 THE COURT: You what?

12 MS. GREEN: I haven't done a
13 summation.

14 MR. MARTIN: Well, it would not be
15 on summation. It would have to be --
16 you have to provide a witness to show
17 that Suffolk County has a need to keep
18 this vehicle.

19 MS. GREEN: I will in my summation,
20 your Honor.

21 MR. MARTIN: A summation is not
22 evidence.

23 MS. GREEN: Documentation proves
24 that Mr. Ferrari has another vehicle to
25 his disposal. He's got a Land Rover

1 that is in his use -- registered in his
2 name and it is able to be used,
3 therefore, there is no hardship by
4 Mr. Ferrari to use that vehicle. This
5 is a Ferrari that we are talking about.

6 THE COURT: Let me do this. First
7 of all, I have the documents and they're
8 in evidence. The County Attorney is not
9 going to call any witnesses. Does the
10 County Attorney rest at this point?

11 MS. GREEN: Yes, your Honor.

12 THE COURT: Counsel, are you going
13 to call any witnesses?

14 MR. MARTIN: No, your Honor, there
15 is no evidence.

16 THE COURT: Do you rest?

17 MR. MARTIN: Yes, sir.

18 THE COURT: Let me look at these
19 documents.

20 MR. MARTIN: Your Honor, can I also
21 bring forth Section 270-26? I will show
22 it to Counsel to make sure --

23 MS. GREEN: I am familiar with it,
24 your Honor.

25 THE COURT: I will take judicial

1 notice of the contract of it. I have a
2 copy of it myself.

3 MR. MARTIN: I call your attention
4 Notice of Seizure 1A.

5 THE COURT: Let me look at the
6 documents first, and then I will give
7 you each an opportunity to speak.

8 (WHEREUPON, a brief recess was
9 taken.)

10 THE COURT: The only evidence
11 before the Court is the documentary
12 evidence that Counsel has stipulated to
13 go into evidence, and based on that
14 evidence, I will now allow Counsel first
15 -- Counsel, tell me what you want me to
16 do and why? As I said, the evidence
17 before me is the documentary evidence.
18 You stipulated that, that go into
19 evidence. It is in evidence and right
20 now it's the only evidence. Go ahead.

21 MR. MARTIN: Your Honor, I would
22 like to call your attention to a 2006
23 case called Malafi verses 2002 Dodge in
24 which Judge Pitt, again, points out that
25 a neutral magistrate can only view those

1 documents in front of them, and that it
2 is the County's burden to show that the
3 retention of the vehicle is necessary
4 and that taking of a bond, taking
5 photographs, putting an interlock device
6 on it, will not suffice for satisfying
7 the need for retention of the vehicle.

8 In this case, there is no evidence that
9 the vehicle was going to be moved out of
10 state or destroyed or sold. The Court
11 can order such thing as restraining
12 against sale. In addition, everyday
13 that this Court and the County hold --
14 no, not this Court because the Court can
15 not hold the vehicle -- the County
16 holding the vehicle is a violation of my
17 clients right under the Krimstock which
18 says, "The County has the burden of
19 proving in a civil forfeiture matter
20 those things necessary to retain the
21 vehicle" because my client has not been
22 proven guilty of anything despite his
23 previous record and until such time,
24 they have to prove that the retention of
25 the vehicle as an instrumentality of the

1 crime did necessary, rather than as
2 posting of a bond or other things would
3 not suffice.

4 THE COURT: That's it?

5 MR. MARTIN: Yes, your Honor.

6 MS. GREEN: Your Honor, the County
7 believes that probable cause --

8 THE COURT: I want you to comment
9 on Krimstock, as well.

10 MS. GREEN: Yes, your Honor, I
11 understand that.

12 Your Honor, the County believes
13 that probable cause for the stop and the
14 arrest has been shown based on the
15 documentation in evidence which has been
16 marked into evidence without objection
17 by Counsel.

18 Additionally, no one has testified
19 on their own behalf to refute this
20 information, therefore, it must be taken
21 in as part of evidence in and is before
22 your court.

23 In this particular case, the fact
24 warrants that he was weaving in and out
25 of traffic. He was speeding and he also

1 admitted to owning the crack pipe that
2 was found in the vehicle.

3 MR. MARTIN: Objection, your Honor.

4 THE COURT: It's in evidence.

5 Overruled.

6 MS. GREEN: In addition, this is
7 very valuable vehicle. This is a
8 Ferrari that we're speaking about. In
9 order for the County to maintain this
10 vehicle in the state that it was taken
11 at the time of the seizure, and based on
12 his driving record which is in the
13 abstract, your Honor, there is speeding.
14 There was other tickets warranted. The
15 County believes that this vehicle would
16 be damaged or even removed from the
17 state if it was allowed to go back to
18 the owner.

19 MR. MARTIN: Objection, your Honor,
20 Counsel is testifying.

21 THE COURT: This is just a
22 summation.

23 MR. MARTIN: She's not allowed to
24 testify. She's not allowed to give
25 evidence during summation, sir.

1 THE COURT: Counsel, during the
2 summation, any attorney can comment on
3 what the evidence tends to show. The
4 evidence is before the County Attorney
5 and the evidence is before me. You and
6 the Count Attorney can, in summation,
7 tell the Court what the evidence tends
8 to show. Overruled.

9 MS. GREEN: Additionally, based on
10 his prior conviction, which was only in
11 2006, there's obviously a problem with
12 Mr. Ferrari. Therefore, the County
13 believes that a bond, a restraining
14 order, or any of the other means
15 available to them, in this particular
16 case, would not maintain this vehicle in
17 the manner and in the form that it was
18 taken when it was seized. A motor
19 vehicle is moveable. It is a moveable
20 object, and based on the testimony and
21 based on what we have in evidence,
22 Mr. Ferrari has not proven to be a
23 responsible driver in this particular
24 case. Therefore, the County requests
25 retention of this vehicle for the

1 remainder of the forfeiture action.

2 In addition, you wanted me to
3 comment on Krimstock. Krimstock is the
4 case which deals with lenders -- the
5 lean-holders being notified as to the
6 post seizure hearing notices. The
7 evidence shows that we did notify --
8 there is no lean-holder in this
9 particular case, so the application
10 they're referring to is dicta. As to
11 the burden in the case, yes, it talks to
12 the County to make that burden, but the
13 County has sustained that burden and
14 there is nothing to refute it by
15 Mr. Ferrari or his attorney in testimony
16 form or evidentiary form to allow this
17 Court to determine that the County
18 should not retain it any further.

19 The County wishes to proceed with
20 this forfeiture action and wants
21 retention of the vehicle.

22 Additionally, the case Counsel
23 referred to relating to Judge Pitt, the
24 holding in that case was that the County
25 retained that vehicle, your Honor.

1 THE COURT: After a hearing and
2 based on the credible evidence adduced
3 at the hearing, I find firstly that
4 there was, in fact, probable cause for
5 the stop and the arrest in the case.

6 The second part of my
7 determination is that Suffolk County is
8 directed to retain the vehicle pending
9 resolution of a forfeiture proceeding.

10 I would suggest that the County
11 serve a summons and complaint forthwith.

12 MS. GREEN: Yes, your Honor.

13 THE COURT: Order signed this date.

14 MR. MARTIN: Your Honor, I just
15 want to state my objection on the
16 record.

17 THE COURT: It's on the record.

18 MR. MARTIN: If I could get the
19 Court Reporters information.

20 THE COURT: Step up.

21 (WHEREUPON, this hearing was
22 concluded at 10:33 a.m.)

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1 I N D E X

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3 E X H I B I T S

4	For Petitioner	Description	IN EVID
5	A	Felony Information	9
6	B1	Alcohol/Drug Report	9
7	B2	Refusal	9
8	C	Certificate of Disposition	9
9	C2	Abstract of Driving Record	9
10	E	Notice of Seizure and Hearing	9
11	F	DMV Records	9

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2 C E R T I F I C A T I O N

3 STATE OF NEW YORK)

4 SS:

5 COUNTY OF SUFFOLK)

6 I, MELISSA POWELL, a Shorthand Reporter and

7 Notary Public of the State of New York, do hereby

8 certify:

9 That the within transcript prepared by me is a true
10 and accurate record of this hearing, to the best of my
11 ability.

12 I further certify that I am not related to any of the
13 parties to this action by blood or by marriage and that
14 I am in no way interested in the outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set my hand _____
16 day of _____, 2009.

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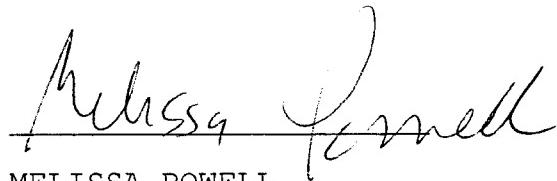
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MELISSA POWELL

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Five Star Reporting, Inc.

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Errata Sheet

I, _____, have read the entire transcript of the hearing held on _____ [date]. I request that the following changes be entered into the record for the reasons indicated. The errata sheet below should be attached to the original transcript and the court copy of the transcript .

Reason Code: 1 Misspelling
 2 Wrong word
 3 Wrong speaker
 4 Other (explain)

Date: _____

Signature: _____

Address: _____

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